

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S LICENSE NO. 551 685 and
DOCUMENT NO. 547-48-9978-D1
Issued to: Anthony L. COLLA

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2389

Anthony L. COLLA

This appeal has been taken in accordance with Title 46 U.S.C. 7702(b) and 46 CFR 5.30-1.

By order entered 7 June 1984, an Administrative Law Judge of the United States Coast Guard at Baltimore, Maryland suspended Appellant's license and document for six months upon finding proved the charge of misconduct. The specification found proved alleges that while serving as Second Mate aboard SS CORONADO under authority of the captioned documents, Appellant did on or about 1 April 1983, while said vessel was at anchor, wrongfully fail to perform his duty as Deck Watch Officer by falling asleep on the wheelhouse settee.

The hearing was held at Baltimore, Maryland, on 2 May and 7 June 1984.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence five exhibits and the testimony of two witnesses.

In defense, Appellant offered in evidence his own testimony.

After the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then entered an order suspending all licenses and documents issued to Appellant for a period of six months.

The Decision and Order was served on 14 June 1984. Appeal was timely filed on 2 July 1984 and perfected on 11 February 1985.

FINDINGS OF FACT

On 1 April 1983, Appellant was serving as Second Mate aboard

the SS CORONADO under authority of his license. The vessel was at anchor in Aruba, Netherlands Antilles and Appellant was assigned the 0000 to 0400 anchor watch. Chief Mate Senecal was Appellant's relief. At 0345 he was awakened by his own alarm clock in his cabin. He dressed quickly and went to the bridge, arriving there a few minutes later. As he opened the door at the bottom of the stairway leading to the bridge, he heard an alarm sounding. He ascended the stairway and opened the door immediately leading to the bridge. As he entered the bridge, he saw Appellant lying in a prone position with his eyes closed on the settee. The alarm continued to sound. Chief Mate Senecal asked Appellant what he was doing and Appellant immediately rose from the settee and turned off the alarm. They then discussed the ship's business for a few minutes and Chief Mate Senecal relieved Mr. Colla of the watch.

After the Chief Mate had completed his watch at 0800, he spoke with the Master and described the incident to him. Appropriate entries were made in the vessel's logbook and, ultimately, this action followed.

The hearing was initially convened on 2 May 1984 in Baltimore, Maryland. At the outset, both Appellant's counsel and the Coast Guard expressed their interest in obtaining the testimony of Chief Mate Senecal. He was not within the geographical area from which he could be subpoenaed to appear personally. Therefore, it was agreed that the Coast Guard would attempt to contact Mr. Senecal and request that he appear voluntarily. He was expected to return to Massachusetts from a foreign voyage in late May. The Administrative Law Judge indicated that he would be receptive to a motion to depose Mr. Senecal should he be unwilling to appear voluntarily.

The Investigating Officer contacted Mr. Senecal and arranged for his appearance in early June. To accommodate the request of both parties and the schedule of Mr. Senecal, The Administrative Law Judge, by his order of 30 May, scheduled a second session of the hearing for 7 June 1984 in Baltimore, Maryland. On 4 June 1984, Appellant's counsel, Mr. Michael Pierson, requested an extension of the hearing date because he was required to participate in a trial before the Baltimore Civil Court on 7 June. Although previously scheduled, this trial was originally expected to be over before 7 June. Because of other docket changes, the Civil Court's schedule changed after Mr. Senecal's testimony was scheduled. The Administrative Law Judge denied the request because both parties had sought the attendance of Mr. Senecal at the hearing and arrangements had already been made to bring him to Baltimore on 7 June.

At the session of the hearing on 7 June, Appellant was

represented by Mr. David Pierson, a member of the firm of Pierson and Pierson. He renewed the request for a continuance of the hearing. Mr. Senecal, however, had come to Baltimore voluntarily for the sole purpose of attending the hearing and was unwilling to remain until the next day to allow the continuance. For this reason the Administrative Law Judge again denied Appellant's request for a continuance.

After Chief Mate Senecal testified, the Coast Guard rested. Appellant then testified in his own behalf and rested.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant urges that the Administrative Law Judge erred by refusing him a continuance and conducting a second session of the hearing in the absence of his original counsel.

APPEARANCE: W. Michael Pierson and David E. Pierson, Attorneys at Law, 10 Light Street, Baltimore, Maryland.

OPINION

Appellant urges that the Administrative Law Judge erred in refusing to grant a continuance at the 7 June session of the hearing so that Appellant's original counsel could be present. I do not agree.

In support of his argument, Appellant urges only that Mr. David E. Pierson, who appeared with him on 7 June, had not heard the earlier testimony and was, therefore, less able to effectively cross-examine Mr. Senecal.

David E. Pierson is an attorney and a member of the same firm as Appellant's original counsel, W. Michael Pierson. He had an opportunity to review the case and represented that he was prepared to proceed. The 7 June hearing had been scheduled by the Administrative Law Judge's order of 30 May pursuant to an agreement between Appellant's counsel, the Coast Guard, and Mr. Senecal. Chief Mate Senecal, the key witness, was unwilling to appear at the later date to testify in person. He was present in Baltimore on 7 June for the sole purpose of testifying that day, and was not under subpoena but had appeared voluntarily. Appellant does not complain that the 7 June date was picked without his counsel's concurrence, only that later events prevented his counsel from being present.

The controlling regulation, 46 CFR 5.20-10 requires the Administrative Law Judge to consider the future availability of

witnesses "in deciding whether to grant a continuance of a hearing." Had the continuance been granted, the live testimony of the one eyewitness to the events charged could have been unavailable. Therefore, I do not believe that the Administrative Law Judge erred in requiring Appellant to proceed with a qualified substitute attorney to ensure Chief Mate Senecal's live testimony.

CONCLUSION

There is substantial evidence of a reliable and probative nature to support the findings of the Administrative Law Judge. The hearing was conducted in accordance with the applicable regulations.

ORDER

The order of the Administrative Law Judge entered at Baltimore, Maryland on 7 June 1984 is AFFIRMED.

B.L. STABILE
Vice Admiral, U.S. Coast Guard
VICE COMMANDANT

Signed this sixth day of May 1985.